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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/606,702	06/29/00	JOHANSEN	M 470AM

QM12/1024
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EXAMINER	
ELOSHWAY, N	
ART UNIT	PAPER NUMBER
3727	4

DATE MAILED: 10/24/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/606,702	JOHANSEN, MARK R.	
	Examiner	Art Unit	
	Niki M. Eloshway	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 July 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) *6-9 and 14-22* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5 and 10-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Claims 6-9 and 14-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4.

Applicant's election with traverse of Group I, the method, in Paper No. 4 is acknowledged. The traversal is on the ground(s) that the claims "may be readily searched, considered and their Patentability evaluated in one application without undue effort by the Patent Office" (page 2 of applicant's response, filed July 30, 2001. This is not found persuasive because the search required for the method is not the same as the search required for the apparatus and product. The method requires a search in class 264 but not necessarily a search in classes 220 and 249. However, classes 220 and 249 are required for the product and apparatus, respectively.

Although applicant believes that the inventions are closely related, the test for determining whether a restriction is proper concerns the distinctness of the inventions. The method and apparatus are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). This was proven in the Restriction Requirement. The method and product are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). This was proven in the Restriction Requirement. The apparatus and product are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as

claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). This too was proven in the Restriction Requirement.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 and 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Chlystun (U.S. 4,082,827). Chlystun teaches a cap and container which are formed by blow molding the container and forming the cap from the flash section. The cap is then separated from the container body. The cap is mechanically welded to the container.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-3 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold et al. (U.S. 6,290,094) in view of Chlystun (U.S. 4,082,827). Arnold et al. disclose the claimed invention except for the cap being separated form the container. Chlystun teaches that it is known to form a cap and container integrally and then separate the cap from the container (see element 31). It would have been obvious to one having ordinary skill in the art at the time the invention was made to

provide the method of Arnold et al. with the additional step of separating the cap from the container, as taught by Chlystun, in order to allow the manufacturer or user to replace the cap if it becomes damaged.

6. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chlystun (U.S. 4,082,827) in view of Kohn et al. (U.S. 6,068,900). Chlystun discloses the claimed invention except for the multiple layers of material. Kohn et al. teach that it is known to form a cap and container from multiple layers of material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Chlystun with the cap and container being made of multiple layers of material, as taught by Kohn et al., in order to improve the barrier properties of the container.

7. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold et al. (U.S. 6,290,094) in view of Chlystun (U.S. 4,082,827), as applied to claim 1 above, and further in view of Kohn et al. (U.S. 6,068,900). The modified method of Arnold et al. discloses the claimed invention except for the multiple layers of material. Kohn et al. teach that it is known to form a cap and container from multiple layers of material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified method of Arnold et al. with the cap and container being made of multiple layers of material, as taught by Kohn et al., in order to improve the barrier properties of the container.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the step of forming the closure from the flash material.

9. This action is NON-FINAL.

10. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.

Niki M. Eloshway/nme
Patent Examiner
October 22, 2001